IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1511 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DISTRICT DEVELOPMENT OFFICER - Petitioner(s)

Versus

KASAMBHAI N SHAIKH - Respondent(s)

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Appearance :

MR RA MISHRA for Petitioner No(s).: 1.
MR SHELAT for MR GM JOSHI for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 22/06/2005

ORAL JUDGMENT

1.0 The petitioner Panchayat has challenged the order dated 03.07.1998 passed by the Labour Court, Nadiad, in

Reference (LNC) No.669 of 1986, whereby the Reference preferred by the respondent was allowed.

2.0 The brief facts of the case are that the respondent herein was working as a “Gram Sevak” with the petitioner Panchayat. During the period of service, the respondent was charge-sheeted and after conducting inquiry, order dated 03.11.1976 was passed, by which the respondent was dismissed from service.

2.1 It is the case of the petitioner that after a period of ten years, the respondent preferred a complaint and pursuant to the above, Reference (LCN) No.669 of 1986 was preferred before the Labour Court at Nadiad. The Labour Court, Nadiad, by impugned order allowed the said Reference preferred by the respondent. Hence, this petition.

3.0 Mr. R A Mishra learned advocate for the petitioner has contended that it was a misconduct on the part of the respondent that he had remained absent from duty consistently. He has further contended that the petitioner - Panchayat cannot be said to be an employer and the respondent cannot be said to be a workman under the provisions of the Industrial Disputes Act, and therefore, the Labour Court has committed an error in granting 50 per cent back wages to the respondent.

3.1 Mr. Mishra has further contended that the respondent was dismissed from service in the year 1976 and he had approached the Labour Court in the year 1986. He has contended that the Labour Court ought not to have entertained the Reference after a period of ten years. He

has, therefore, submitted that the impugned order of the Labour Court is illegal and erroneous and deserves to be quashed and set aside.

4.0 Mr. Shelat learned advocate appearing for Mr. G M Joshi for the respondent has submitted that the order of dismissal passed against the respondent is illegal since he was dismissed from the service mainly on the ground of absenteeism. He has contended that the respondent was in fact willing to work, and therefore, the Labour Court has taken the correct view by directing the petitioner to reinstate the respondent in service with 50 % back wages.

4.1 Mr. Shelat has further contended that the Labour Court ought to have granted back wages to the respondent from the date of Reference till the age of superannuation, which would also have met with the retirement dues of the respondent. He has submitted that the Labour Court has not granted back wages for the said period of delay and has only granted back wages from the date of Reference and that no limitation period has been prescribed under the I.D. Act.

5.0 I have heard learned counsel for the parties and perused the documents placed on record. The respondent herein has produced documentary evidence on the record of the Labour Court as regards his ill-health. The Labour Court has passed the impugned order after considering all the evidence placed before it. Therefore, the contention raised by the petitioner that the respondent had remained absent from duty willingly cannot be accepted since the respondent was not keeping good health.

6.0 The contention raised by the petitioner that the respondent was not willing to work is not tenable since the respondent would have voluntarily resigned from the service if he was not willing to work instead of being dismissed from service by the petitioner. The petitioner Panchayat, by dismissing the respondent from service has deprived him of his retirement dues, and therefore, it is not open to the petitioner to contend that the respondent was not willing to work.

7.0 The contention raised by the petitioner on the point of limitation is also required to be rejected in view of the fact that there is no prescribed period of limitation and the Labour Court has not granted any back wages from the date of dismissal till the respondent approached the Labour Court.

8.0 In above view of the matter, I am in complete agreement with the reasonings given by the Labour Court in its impugned order and find no reason to interfere in this petition. Hence, the petition is dismissed. The impugned order of the Labour Court is confirmed. Rule is discharged with no order as to costs.

8.1 The petitioner Panchayat is directed to comply with the directions issued by the Labour Court within a period of six weeks from the receipt of writ of this order. If the dues are not paid within the period referred to herein above, the petitioner Panchayat shall be liable to pay interest @ 6 per cent per annum on the said amount to the respondent from 07.04.1986 to till the payment is made. The petition stands disposed of accordingly.

(K. S. JHAVERI, J.)

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